

DOCUMENT RESUME

02104 - [A1322288]

[Protest against Failure to Consider Late Proposal]. B-188234.
May 5, 1977. 4 pp.

Decision re: Data Pathing, Inc.; by Paul G. Deabling (for Elmer
B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: National Defense: Department of Defense -
Procurement & Contracts (058).

Organization Concerned: Department of the Army: Watervliet
Arsenal, NJ.

Authority: 55 Comp. Gen. 1340. 38 Comp. Gen. 234. B-184071
(1975). B-150516 (1963). B-154334 (1964). E-181204 (1974).

A protest against Army failure to consider a late
proposal was based on contentions that roadblocks caused late
delivery and that lateness would not have given offeror an
unfair advantage. Since only mishandling by the Government is
cause for consideration of late proposals, and advantages to one
offeror could ensue, the protest was denied. (HTW)

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Boyle
P.L.T.

FILE: B-188234

DATE: May 5, 1977

MATTER OF: Data Pathing Inc.

DIGEST:

1. Hand-delivered best and final offer received after closing date may not be considered under RFP's late proposal clause where late receipt was caused by roadblocks enroute due to sniper in area and not by mishandling by Government after receipt at Government installation.
2. Late best and final offer received before opening of other offers and not subject to exception under RFP's late proposal clause may not be considered when such offer was in offeror's custody until delivery because relaxation of late proposal rule would inevitably create confusion and could give one offeror an advantage over others who had less time to prepare their proposals.

Data Pathing Inc. (DPI) protests the Department of the Army's failure to consider its best and final offer under request for proposals (RFP) No. DAAA22-76-R-0011 due to (1) a technicality in the late bid regulations and (2) an act of God.

By letter dated November 19, 1976, prior to the closing date for the receipt of proposals under the RFP, the Army's contracting officer advised DPI that (1) because of certain deficiencies, DPI's initial proposal could not be evaluated, and (2) to be considered for award, correction of noted deficiencies, requested clarifications, and DPI's best and final offer must be submitted to room 13, Campbell Hall, Watervliet Arsenal by 4 p.m. on December 15, 1976. DPI was also reminded that responses received after the time and date specified would be subject to the late proposal clause of the solicitation.

On December 15, 1976, after being delayed by roadblocks enroute because of a sniper in the area, DPI's representative arrived at Watervliet Arsenal's main gate at or about 3:54 p.m. (the Army contends it was later) and informed the guard on duty that he had a proposal to deliver to Campbell Hall by 4 p.m. DPI states that the guard said he was too busy to call personnel at the

proposal reception room and there was not enough time to arrive at Campbell Hall by 4 p.m. anyway. Later that day, well after 4 p.m., the DPI representative called the contracting officer at home and explained what had happened. The contracting officer told him to bring the proposal to him the next morning. The proposal was hand-delivered the next day and time stamped 7:15 a.m. On December 17, 1976, the contracting officer advised DPI that, under the late proposal clause of the RFP, DPI's proposal was late and could not be considered.

The pertinent portion of the late proposal clause follows:

"c. A modification resulting from the Contracting Officer's request for best and final offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mis-handling by the Government after receipt at the Government Installation.

"d. The only acceptable evidence to establish:

* * * * *

"(ii) the time [of] receipt at the Government installation is the time/date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation." (Emphasis added.)

DPI essentially contends that (1) the delay enroute to the Watervliet Arsenal caused by the presence of a sniper in the area has to be considered an act of God; and (2) citing I&E Construction Company Incorporated, 55 Comp. Gen. 1340 (1976), 76-2 CPD 139, even though the best and final offer was received after the official closing time, it was in the hands of the Government prior to the actual opening and reading of other proposals, thus affording DPI no unfair advantage over other offerors.

In response, the Army refers to other decisions of this Office concerning delays which were not the fault of an offeror but resulted in or contributed to a hand-delivered proposal arriving after the closing time for receipt. In each of those decisions, we held that a late, hand-delivered proposal or bid could not be considered. 38 Comp. Gen. 234 (1958) (insufficiency of directional signs located on the depot resulted in hand-carried bid being

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submitted 7 minutes late); B-150518, March 1, 1963 (delay caused by commercial air schedules resulted in hand-carried proposal being submitted 2 hours late); B-154334, July 23, 1964 (traffic congestion caused hand-carried bid to arrive late).

The general rule followed by our Office is that an offeror has the responsibility for delivery of its offer to the proper place at the proper time. Associate Control, Research and Analysis, Inc., B-184071, September 25, 1975, 75-2 CPD 186. As stated in the RFP, best and final offers received after the time and date specified would not be considered unless the late receipt was due solely to mishandling by the Government after receipt at the Government installation. Here, the delay--caused by unanticipated, unusual traffic conditions--is clearly not chargeable to improper Government action nor was it after receipt at the Government installation. Therefore, it is not excusable under the late proposal clause of the RFP. Associate Control, Research and Analysis, Inc., *supra* (held that hand-delivered proposal, which was delivered late because of unusual delay in traffic caused by Metro construction in Washington, D.C., may not be considered for award).

In response to DPI's second contention, the Army argues that our decision in I&E Construction Company Incorporated, *supra*, is not applicable here. In that case, a Western Union messenger attempted to deliver a bid modification prior to bid opening but could not because the building was locked. The modification was delivered the next day. We held that the late bid rules did not contemplate such a situation, and since the modification was in Western Union's custody between the time it was transmitted and the time it was received by the Government, consideration of the modification would not undermine the integrity of the competitive bidding system. Unlike that situation, here, DPI's best and final offer was in its custody until the day after the closing date. Therefore, we agree with the Army.

The manner in which the Government conducts its procurements must be subject to standards so that all will be treated equally and impartially. Clearly there must be a time after which hand-delivered offers may not be received and to permit one offeror to deliver its proposal after the closing date would tend to subvert the competitive system. By application of its late proposal rules the Government may lose the benefit of a proposal that offers terms more advantageous than those received timely; however, maintenance of confidence in the competitive procurement system is of greater importance than the possible advantage to be gained in a single procurement. Furthermore, any relaxation of the rule

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when a best and final offer remains in the offeror's custody after the closing date and time would inevitably create confusion and could give one offeror an advantage over the others who had less time to prepare their proposals. Emergency Care Research Institute, B-181204, August 23, 1974, 74-2 CPD 118; B-169821, August 12, 1970.

Accordingly, DPI's protest is denied.

Paul G. Hensbly
For the Comptroller General
of the United States